

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|-------------------------------------------------|-------------------------------------|---------------------------|--------------------------------------------------------|------------------------------------|---------------------------------|
| Investigator: Yolexis Rodriguez | Team: Squad #11 | CCRB Case #: 201809680 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 11/13/2018 1:00 PM | Location of Incident: [REDACTED] | Precinct: 84 | 18 Mo. SOL 5/13/2020 | EO SOL 12/28/2020 | |
| Date/Time CV Reported | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 11/19/2018 11:13 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. SGT Michaelang Hidalgo | 00497 | 936043 | 084 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Michael Guardino | 23348 | 953934 | SRG 1 |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|-------------------------------------------------------------------------------|-----------------------------|
| A.SGT Michaelang Hidalgo | Abuse: Sergeant Michaelang Hidalgo threatened to seize § 87(2)(b) s property. | [REDACTED] |

Case Summary

§ 87(2)(b) filed the following complaint via phone with IAB on November 13, 2018, generating original log #18-44603. It was forwarded to the CCRB on November 19, 2018.

On November 13, 2018, at approximately 1:00p.m., § 87(2)(b) was on the sidewalk in § 87(2)(b) in Brooklyn, a McDonald's restaurant, selling music CDs as a street vendor. § 87(2)(b) was playing music through a speaker. Sgt. Michaelangelo Hidalgo of the 84th Precinct and PO Michael Guardino of Strategic Response Group 1 entered the McDonald's restaurant. Before entering, Sgt. Hidalgo asked § 87(2)(b) to turn his music down and § 87(2)(b) complied.

Minutes later, Sgt. Hidalgo and PO Guardino exited the restaurant. § 87(2)(b) asked Sgt. Hidalgo if he could turn the volume of his music up. Sgt. Hidalgo said no and that the music was too loud. § 87(2)(b) explained that the volume of the music was not above the decibel level permitted for a commercial zone. Sgt. Hidalgo said, "If you turn it back up, I'm going to take the speaker" (**Allegation A – Abuse of Authority**, § 87(2)(g)).

There is no video evidence of the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sgt. Michaelangelo Hidalgo threatened to seize § 87(2)(b)'s property.

§ 87(2)(b) was interviewed at § 87(2)(b) in Brooklyn on December 7, 2018 [Board Review 01]. It is undisputed that he was playing music from a speaker when two officers entered the McDonald's restaurant. § 87(2)(b) testified that one of the officers, whom he described as a white or Hispanic male with a light complexion, 5'9" tall, 160lbs, with dark hair, wearing uniform and who also identified himself as a sergeant, asked him to turn the music down before entering the McDonald's. § 87(2)(b) complied. Minutes later, the sergeant and his partner exited the McDonald's. § 87(2)(b) asked the sergeant if it was okay to turn the volume of the music up. The sergeant said no and § 87(2)(b) asked why not. The sergeant stated that the music was too loud.

§ 87(2)(b) explained that the volume of the music was not above the decibel level permitted for a commercial zone. The sergeant told § 87(2)(b) "If you turn it back up I'm going to take the speaker." § 87(2)(b) testified that he asked the sergeant on what grounds the speaker would be taken and he replied, "I'm a sergeant, I can do what I want to do." § 87(2)(b) then called IAB to file a complaint against Sgt. Hidalgo.

Given that § 87(2)(b) subsequently called IAB to file his complaint, original log #18-44603 was generated. This IAB log confirmed that Sgt. Hidalgo of the 84th Precinct called IAB to report that he responded to § 87(2)(b) at § 87(2)(b) in Brooklyn.

Sgt. Hidalgo was interviewed at the CCRB on January 15, 2019 [Board Review 02]. Sgt. Hidalgo testified that there was no conversation between he and § 87(2)(b) before he entered the McDonald's restaurant. When Sgt. Hidalgo exited the restaurant, § 87(2)(b) proceeded to turn up the volume of his speaker. Sgt. Hidalgo testified that he could feel the volume of the speaker from approximately 7-10 feet away. Sgt. Hidalgo believed that § 87(2)(b) was in violation of noise ordinance laws because the music caused alarm to himself and people on the sidewalk; people appeared annoyed by their facial expressions and some people began to cross the street.

Sgt. Hidalgo testified that he approached § 87(2)(b) and asked him to lower the volume of the speaker approximately four times. § 87(2)(b) did not lower the volume; he immediately began to curse at Sgt. Hidalgo, saying, “Get the fuck out of here, motherfucker.” Sgt. Hidalgo told § 87(2)(b) to watch his language and § 87(2)(b) continued to curse at him saying, “Fuck you, get the fuck out of here. You can’t tell me what to do.” Sgt. Hidalgo told § 87(2)(b) that he was being disorderly and this his speaker was loud. § 87(2)(b) said, “What are you going to do about it? Get the fuck out of here, you can’t do shit to me.” Sgt. Hidalgo told § 87(2)(b) that if he continued, he would issue him a summons for being disorderly and a second summons for the loud speaker. Sgt. Hidalgo also told § 87(2)(b) that he would voucher his speaker.

§ 87(2)(b) continued to curse at Sgt. Hidalgo and Sgt. Hidalgo asked PO Guardino if he had his summons book with him. § 87(2)(b) then lowered the volume of the speaker. Sgt. Hidalgo explained to § 87(2)(b) that he just wanted him to turn the volume down, not turn off the speaker. Sgt. Hidalgo did not issue any summonses to § 87(2)(b) and did not confiscate § 87(2)(b)s speaker, though he testified that the procedure for circumstances in which a speaker is played loudly in public would entail issuing a summons and vouchering the speaker.

PO Michael Guardino, Sgt. Hidalgo’s partner, was interviewed at the CCRB on February 6, 2019 [Board Review 03]. PO Guardino testified that there was no interaction with § 87(2)(b) before he and Sgt. Hidalgo entered the McDonald’s restaurant. After PO Guardino and Sgt. Hidalgo exited the restaurant, § 87(2)(b) was playing music and Sgt. Hidalgo asked him to turn it down. § 87(2)(b) did not comply with Sgt. Hidalgo’s order; § 87(2)(b) appeared annoyed by Sgt. Hidalgo’s request, though he did not say or do anything in response.

PO Guardino testified that the music was loud and disturbing pedestrians because he could not hear anything else. He also believed that the volume of the music violated a noise ordinance because it was extremely loud; PO Guardino did not know what noise ordinance § 87(2)(b) violated specifically. PO Guardino testified that a street vendor may be issued a summons and have their speaker vouchered for playing music too loudly, however, § 87(2)(b) was not issued a summons and his speaker was not confiscated. PO Guardino did not recall Sgt. Hidalgo making a statement about taking the speaker.

§ 87(2)(b), § 87(2)(g)

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Civilian and Officer CCRB Histories

- § 87(2)(b), § 87(2)(g)
- Sgt. Michaelangelo Hidalgo has been a member of service for 14 years and has no other allegations against him.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On February 7, 2019, a Notice of Claim request was submitted to the Office of the New York City Comptroller's Office and will be added to the case file upon receipt.

- § 87(2)(b) [REDACTED]

Squad No.: _____

Investigator: _____

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| Signature | Print Title & Name | Date |
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Squad Leader: _____

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| Signature | Print Title & Name | Date |
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Reviewer: _____

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